
(2013) 02 OHC CK 0008
In the Orissa High Court
Case No : Writ Petition (C) No. 9098 of 2004

Arrantaswar Deb and Others

APPELLANT

Vs

Harihar Acharaya

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 16, 7
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15, Order 6 Rule 17, Order 6 Rule 18, Order 6 Rule 5, 16
General Clauses Act, 1897 — Section 6

Citation : (2013) 116 CLT 349

Hon'ble Judges : B.K. Misra, J

Bench : Single Bench

Advocate : Aditya Kumar Mohapatra, for the Appellant; Sujata Dash and Ansuman Bhuyan, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Mishra, J.—The Petitioners, who were the Plaintiffs in Title Suit No. 294 of 1999 pending in the Court of the Learned Civil Judge (Jr. Divn.), Puri being aggrieved with the order of the said Court date 12.8.2004 under Annexure-5, allowing the prayer of the Opp. Party-Defendant for amendment of the written statement, has approached this Court for quashing of the same. The present Petitioners as Plaintiffs filed the suit for declaration that the Plaintiffs 1 & 2 are the public deities & therefore the entire body of the villagers has the right to worship & perform Seba puja. The Plaintiffs also prayed for a declaration that Defendant No. 1 is not the sole marfatdar of the deities Plaintiffs 1 & 2 & has no exclusive right of worship & Seba puja. Besides that a prayer was also made in the said suit for permanent injunction restraining the Defendant from debarring the villagers to worship & perform Seba puja of the deities. In the said suit the sole Defendant entered appearance & filed written statement. Evidence from both sides were taken in the Court below & the matter was posted for argument. At that stage a petition was filed by the sole Defendant who is the present Opp.

Party in this Writ Petition praying for an amendment to the written statement i.e. in respect of substituting the word "rather" by the word "and" in Paragraph-8 of the said written statement on the ground that such amendment was necessary for correcting a typographical mistake. The prayer for amendment was objected to on the ground that it was filed at a very belated stage & that too after closure of evidence. It was also the case of the Plaintiffs that by the proposed amendment the nature & character of the suit is going to be changed.

2. Learned Civil Judge (Jr. Divn), Puri by the impugned order at Annexure-5 allowed the prayer for amendment of the written statement subject to payment of cost of Rs. 100 which is under challenge in this Writ Petition.

3. Mr. A.K. Mohapatra, Learned Counsel appearing for the Petitioners by placing reliance on several decisions of the Apex Court as reported in Gautam Sarup Vs. Leela Jetly and Others, Gautam Sarup Vs. Leela Jetly and Others, & also on a decision of this Court as reported in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, , Barendra Biswal v. Rama Roy @ Das & another contended that when the amendment petition is filed only to linger the matter & when the party has tried to introduce a new story & also wants to withdraw the earlier admission made in the pleading, the prayer for amendment should be disallowed. Mr. Mohapatra, Learned Counsel very strenuously contended that after the amendment incorporated to the CPC in the year 2002 & in view of the proviso inserted to order 6, Rule 17 of the CPC (hereinafter referred to as the ("C.P.C.")) the Learned Trial Judge should not have allowed the amendment of the written statement after commencement of the trial & the Learned Trial Court ignored the mandatory provision of law-resulting in miscarriage of justice. It is accordingly urged on behalf of the Petitioners that impugned order be quashed.

4. Dr. Sujata Dash, Learned Counsel appearing for the Opp. Party on the other hand refuted the contention of the Learned Counsel for the Petitioners contending that the proviso inserted to Order 6, Rule 17 of the C.P.C. after amendment of the year 2002 is not applicable to the facts of this case as the suit in this case was filed in the year 1999 & in that context reliance was placed on a decision of this Court as reported in Harachand Nayak and Others Vs. Ramamani Mohapatra and Others, Besides that she also placed reliance on a decision of the Apex Court as reported in State Bank of Hyderabad Vs. Town Municipal Council,

5. By now it is the settled position of law that the jurisdiction of the Court to allow an amendment of pleadings is very wide & the dominant purpose of allowing the amendment is to minimize the litigation. Rules of procedure are intended to be a handmaid to the administration of justice". A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. However negligent or careless may have the first omission, &, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

6. In the Instant case, the Defendant by the proposed amendment only wanted to correct the typographical error in Para-8 of the written statement & wanted to replace the word "rather" by the word "&" only. I have gone through the written statement filed by the sole Defendant in the Court below by substituting the word "&" in place of "rather". It is seen that no new fact was intended to be introduced by amending the written statement & by the proposed amendment also there is no change in the nature the character of & original pleadings in the original written statement. The Learned Court below has passed a very well reasoned order by allowing the prayer of the amendment to the written statement & I do not find any infirmity in the said order calling for interference by this Court. The contention of the Learned Counsel for the Petitioners that the Court below should have refused the amendment in view of the proviso to order 6, Rule 17 of the C.P.C., which was introduced by way of amendment in the year, 2002, is not tenable in the eye of law in view of the settled position that the said proviso to Order 6, Rule 17 of the C.P.C. is not applicable to the suit which was filed in the year 1999.

7. Section 16(2) of the Amending Act of 2002 reads as under:-

16(2) Notwithstanding that the provisions of this Act have come into force or repeal under Sub-Section (1) has taken effect, & without prejudice to the generality of the provisions of Section 6 of the General Clauses Act. 1897.

(a) *** (b) the provisions of rules 5, 15, 17 & 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the CPC (Amendment) Act, 1999 & by Sec. 7 of this Act shall not apply to in respect of any pleading filed before the commencement or Section 16 of the C.P.C. (Amendment) Act, 1999 & Section 7 of this Act.

Thus, in view of the aforesaid provision there cannot be any doubt whatsoever that the present suit having been filed in the year 1999, proviso to Order VI, Rule 17 of the Code is not applicable.

Thus from the aforesaid discussion of the provision of law & analyzing the impugned order & materials on record, I find no merit in this Writ Petition & there is nothing to interfere with the impugned order at Annexure-5. Accordingly the Writ Petition stands dismissed, but in the circumstances without any costs. The interim Order Dated 27.8.2004 stands vacated. The Learned Civil Judge (Jr. Divn,), Puri is directed to proceed with the hearing of the suit as expeditiously as possible & to complete the same by end of first quarter, 2013.